

# **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT SEATTLE

4 BUNGIE, INC., )

5 Plaintiff, )

6 vs. )

No. 2:21-cv-811-TSZ

7 AIMJUNKIES.COM; PHOENIX )

8 DIGITAL GROUP, LLC; DAVID )

9 SCHAEFER; JORDAN GREEN; )

10 JEFFREY CONWAY; and JAMES )

11 MAY, )

12 Defendants. )

13 VIDEO RECORDED 30(B)(6) DEPOSITION UPON ORAL EXAMINATION

14 OF PHOENIX DIGITAL GROUP, LLC

15 BY DAVID SCHAEFER

16 6:02 P.M.

17 MARCH 20, 2023

18 WITNESS LOCATED AT: UNDISCLOSED LOCATION

19 REPORTED BY: BETSY E. DECATER, RPR, CCR 3109

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A P P E A R A N C E S

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ALSO PRESENT: SCOTT NORTON, Videographer  
JAMES BARKER

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1 MARCH 20, 2023

2 6:02 P.M.

3 --oOo--

4

5 VIDEOGRAPHER: Good evening, everyone. Here  
6 begins the remote deposition of Phoenix Group, LLC,  
7 pursuant FRCP 30(b)(6). This is in the matter of  
8 Bungie, Inc. versus AimJunkies.com, et al. This case is  
9 in the United States District Court, Western District of  
10 Washington at Seattle. Case number is 2:21-cv-811-TSZ.

11 Today's date is Monday, March 20th, 2023. The  
12 current time is 6:02 p.m. Pacific time. This is a  
13 remote deposition through Zoom video conferencing. The  
14 videographer is Scott Norton, here on behalf Centex  
15 Litigation Services. Would counsel please introduce  
16 yourselves and state whom you represent?

17 MR. MARCELO: Christian Marcelo for  
18 Plaintiff, Bungie. I'm joined by James Barker, general  
19 counsel for Bungie.

20 MR. MANN: And I am Philip Mann. I'm here  
21 on behalf of all Defendants, in particular Phoenix  
22 Digital for this particular 30(b)(6) deposition.

23 VIDEOGRAPHER: Thank you all very much. Our  
24 reporter today is of Betsy Decater with Centex. Will  
25 the reporter please swear in the witness.

1 DAVID SCHAEFER,  
2 sworn as a witness by the Certified Court Reporter,  
3 testified as follows:  
4

5 EXAMINATION

6 BY MR. MARCELO:

7 A. Now, is this the personal or the 30(b)(6)?

8 Q. This is the 30(b)(6) deposition of Phoenix  
9 Digital. My hope is that we will get everything done in  
10 this one deposition. But we can always shift over to  
11 the other deposition after if we need to.

12 Mr. Schaefer, you've been through this deposition  
13 process before, right?

14 A. Yes.

15 Q. You were deposed in connection with the  
16 arbitration?

17 A. Yes.

18 Q. Okay. So same general rules apply. I'm going to  
19 kind of go through them again. Remember to talk one at  
20 a time, wait for me to finish the question before you  
21 start answering. If something's unclear, ask me, I'll  
22 try to make the question more clear. No nonverbal  
23 answers. We'll need answers on the record. Okay?

24 A. Yes.

25 Q. And especially in video chats we tend to start

1           **Q. What is Phoenix Digital's allegation regarding**  
2           **how Bungie breached the terms of service by displaying**  
3           **the cheat software?**

4           A. Let's scroll down two paragraphs. "Unless  
5           explicitly authorized by AimJunkies, our services and  
6           our software may not be sold, resold, leased, rented,  
7           leased, distributed, transferred or used in any  
8           commercial way." What is commercial way --

9           **Q. We'll get there in a second. Mr. Schaefer, but**  
10          **I'm still -- I just need an answer to the question**  
11          **regarding the display.**

12                   MR. MANN: Objection. He already answered  
13           your question.

14          A. It was used in a commercial way.

15                   MR. MANN: And I object to you arguing with  
16           the witness. He answered your question.

17          **Q. (BY MR. MARCELO) I'm going to ask back the**  
18          **question again so that I have a clean answer. What ways**  
19          **is Phoenix Digital alleging that Bungie displayed the**  
20          **cheat software that breached the terms of service?**

21                   MR. MANN: Asked and answered.

22          A. Yes.

23                   MR. MANN: Go ahead and answer again. Let's  
24           play the game here.

25          A. Your -- what do you call that, a 301(b)(6) or

1 whatever, the want-a-be expert said that you guys got it  
2 from the guy that purchased it and you opened it up and  
3 took a look at it.

4 Q. (BY MR. MARCELO) Okay.

5 A. Also, also, our expert has looked at the AEO that  
6 was provided and has provided us reports showing that  
7 you guys did more than just look at it.

8 MR. MANN: I'll caution you, Mr. Schaefer.  
9 Don't get into any of that stuff. That's a  
10 non-testifying expert, so I'll caution you not to talk  
11 about that.

12 Q. (BY MR. MARCELO) Mr. Schaefer, any other ways  
13 Phoenix Digital alleges Bungie breached Phoenix  
14 Digital's terms of service?

15 A. Two paragraphs down it says that it was used in a  
16 commercial way, and it's not to be used in any  
17 commercial way.

18 Q. And what exactly was the commercial way Bungie  
19 used the cheat software?

20 A. Your expert stated that they fired it up so they  
21 could see how it worked. A representative of Bungie who  
22 said that they used it to see how it works, that's a  
23 commercial way.

24 Q. Can you explain that to me? What do you mean  
25 that is a commercial way?

1 A. Was it used for personal use?

2 Q. So any use that's not personal use is commercial  
3 use?

4 A. 100 percent.

5 Q. Any other ways that Phoenix Digital alleges  
6 Bungie breached the Phoenix Digital terms of service?

7 A. Let's go to the next paragraph, "You shall not  
8 modify, hack, decompile, disassemble, reverse engineer,  
9 derive source code or create derivative works of our  
10 software in part or in whole. You shall not transfer  
11 our software or display the software's object code on  
12 any computer screen or to make any hard copy memory  
13 dumps of the software's object code." We allege you did  
14 that.

15 Q. And when you say "we allege you did that," which  
16 of those actions that you just read --

17 A. All of the above.

18 Q. Mr. Schaefer, just let me finish the question.  
19 Which of those actions that you just read does  
20 Phoenix Digital allege Bungie did?

21 A. All of the above.

22 Q. So Phoenix Digital alleges that Bungie modified  
23 the cheat software?

24 MR. MANN: Asked and answered.

25 Q. (BY MR. MARCELO) Is that right?

1           A. Phoenix Digital is paying none of the legal fees  
2     for none of the defendants because they don't have any  
3     revenue to pay fees.

4           **Q. So who is paying the legal fees, then?**

5           A. The individuals when they're financially capable.  
6     And at this point that's not happening real fast. But,  
7     hey, I keep pushing.

8           **Q. And so do these legal fees then include charges**  
9     **for Mr. May as well?**

10          A. I can't speak for Mr. May.

11          **Q. You don't know one way or another whether the**  
12     **legal fees claimed as damages here include legal fees**  
13     **for Mr. May?**

14          A. No, they do not. I can only speak -- I'm  
15     30(b)(6) and I can only speak for Phoenix Digital. His  
16     would be on top of this.

17          **Q. Let's scroll back up for a second to the second**  
18     **sentence, "Such damages include but are not limited to**  
19     **investigating and responding to inaccurate and factually**  
20     **baseless claims." Would you agree if the claims were**  
21     **accurate, then there wouldn't be damages to Phoenix**  
22     **Digital?**

23          A. I don't understand the question.

24          **Q. Yeah. Let me phrase it a different way.**

25               **If the claims made by Bungie were accurate,**

1 Phoenix Digital isn't alleging that Bungie would be  
2 liable for asserting those claims, right?

3 A. You can assert until the cows come home, but you  
4 ought to have some evidence to back it up. No, it was  
5 your 30(b)(6) guy that said we don't have any evidence,  
6 we just believe.

7 Q. What I'm asking here is where it says "inaccurate  
8 and factually baseless claims," if the claims are  
9 accurate, is it Phoenix Digital's position that Bungie  
10 would still be liable for these damages?

11 A. I don't know. I'm not a lawyer.

12 Q. Let's talk about the valuation of AimJunkies.

13 A. Yes.

14 Q. Okay. So in the supplemental response exhibit --  
15 sorry, what exhibit is this?

16 THE COURT REPORTER: I believe it's 64.

17 MR. MARCELO: Thank you.

18 Q. (BY MR. MARCELO) Mr. Schaefer, in Exhibit 64,  
19 supplemental response, it says, "The value of the  
20 AimJunkies website declined from a high of \$6,384,000 in  
21 2019," right?

22 A. Yes.

23 Q. Where did the valuation of \$6,384,000 come from?

24 A. It came from a times revenue method of  
25 calculating based on the federal tax returns.

1 Q. Explain to me what a times revenue calculation  
2 is.

3 A. I'll read it to you. "Under the times revenue  
4 business valuation method, a stream of revenues  
5 generated over a certain period of time is applied to a  
6 multiplier which depends on the industry and economic  
7 environment."

8 Q. And where are you reading that from?

9 A. Investopia. Investopedia, excuse me.

10 Q. Who came up with this valuation?

11 A. I did.

12 Q. And how did you come up with it for 2019  
13 specifically? What inputs did you use?

14 A. I used the federal tax return, like I've already  
15 said.

16 Q. And so the -- you used the revenue for Phoenix  
17 Digital in 2019?

18 A. Yes.

19 Q. Do you have any educational background in  
20 providing valuations of companies?

21 A. What was the question?

22 Q. Do you have any educational background in  
23 providing valuations of companies?

24 A. I don't understand the question.

25 Q. Would you say you're an expert at providing

1 valuations of companies?

2 A. I wouldn't say I'm an expert.

3 Q. Is there any other factors you considered in

4 determining the value of the AimJunkies website?

5 A. No.

6 Q. Were there any offers to purchase the AimJunkies  
7 website in 2019?

8 A. Yes.

9 Q. From who?

10 A. Banek.

11 Q. How much did he offer to purchase the website  
12 for?

13 A. I don't remember.

14 Q. You remember the conversation with him --

15 A. Yeah. We've already covered all of this before,  
16 Christian. I'm not going to go down this path again.

17 Q. I'm going to keep asking about these because  
18 these are your specific damages. The conversation with  
19 Mr. Banek about purchasing the AimJunkies website, that  
20 was in 2019?

21 A. I believe so. We sent -- if you remember  
22 correctly, we sent a response to what's his name down in  
23 LA and told him that we had sold it because we had it  
24 sold.

25 Q. And do you remember roughly how much Mr. Banek

1     **agreed to pay for the AimJunkies website?**

2           A.   I do not remember.

3           **Q.   Was it over one million?**

4           A.   I do not remember.

5           **Q.   And I'm just asking you if you remember if it was**  
6     **over a million dollars or not?**

7           A.   I'm not going to commit to a number because I do  
8     not remember what it was.

9           **Q.   Was anyone else involved in the conversation with**  
10    **Mr. Banek about purchasing the website?**

11          A.   No.

12          **Q.   Any notes or writing evidencing that**  
13    **conversation?**

14          A.   No.

15          **Q.   And it's just conversation between you and Mr.**  
16    **Banek?**

17          A.   Yes.

18          **Q.   Who called who regarding that sale?**

19          A.   Nobody called anybody.

20          **Q.   How did you communicate around the sale?**

21          A.   We've already covered all of this.

22          **Q.   Mr. Schaefer, how did you communicate regarding**  
23    **this sale?**

24          A.   I don't remember.

25          **Q.   And you don't remember if the sale -- the**

1 MR. MARCELO: I think now's probably a good  
2 time to take a break because I'm sure that Betsy would  
3 love a break.

4 VIDEOGRAPHER: The time 8:03 p.m. We're now  
5 off the record.

6 (Recess taken.)

7 VIDEOGRAPHER: The time is 8:39 p.m. We are  
8 back on the record.

9 Q. (BY MR. MARCELO) Mr. Schaefer, you understand  
10 you're still under oath?

11 A. Yes.

12 Q. Let's go back for a second to Exhibit 60, the  
13 terms of service for Phoenix Digital. What evidence  
14 does Phoenix Digital have that that terms of service was  
15 on the website in January of 2020?

16 A. I'd have to think about that answer. I don't  
17 have an answer for that right now. I know what the  
18 facts are. I don't have to guess. I don't have to  
19 surmise. It's been on the site for years, and you can  
20 ask anybody that's dealing with the site, whether it's  
21 Jordan or Jeff or James or whoever, anybody you want to  
22 bring in, and they're going to tell you all the same  
23 thing because they know that's been there from day one.

24 MR. MANN: And I'll state for the record  
25 that testimony under oath is in fact evidence.

1 Q. (BY MR. MARCELO) And, Mr. Schaefer, all I'm  
2 asking is what evidence is there, whether it's  
3 testimony, whether it's documents --

4 A. Testimony. I gave -- I gave you the documents  
5 that are on the site. To be honest with you, your  
6 people have been there. Is it the same one that's on  
7 there now as what was there before? You tell me.

8 Q. When you say you gave the documents on the site,  
9 what documents are you referring to?

10 A. The one that you've got here in -- on the record.

11 Q. Right. Are there any other documents related to  
12 this 2020 terms of service that Phoenix Digital  
13 produced?

14 A. They're as accessible as what yours are from  
15 2019.

16 Q. Mr. Schaefer, I want to focus on Phoenix  
17 Digital's terms of service, if there's any other records  
18 of that 2020 terms of service being on the AimJunkies  
19 website in January of 2020?

20 A. Not that I'm aware of unless it's on Wayback or  
21 something like Wayback.

22 Q. And you referenced an expert earlier, and I don't  
23 want to get into anything privileged, I'm just wondering  
24 if that expert is expected to testify in this trial?

25 A. I can't tell you at this point.

1 Q. You don't know one way or another?

2 A. We will have expert this time.

3 Q. You will have a testify -- the answer is you will  
4 have a testifying --

5 MR. MANN: At this point, wait, I'm going to  
6 object. This is getting into attorney work product  
7 matters and attorney-client privilege. Mr. Schaefer,  
8 you do not have to answer any questions regarding the  
9 strategy that you're going to follow based on advice  
10 that you may or may not have received from your counsel.

11 MR. MARCELO: And I -- Mr. Mann, let me know  
12 if you disagree. I think with this specific question of  
13 whether the expert that was referred to is intended to  
14 be a testifying expert, just one way or another is not  
15 privileged.

16 MR. MANN: Did you say is intended to?

17 MR. MARCELO: Right. The expert --

18 MR. MANN: No. No. If you're talking -- if  
19 you're talking -- if you're asking about what our  
20 intentions are, what procedures we intend to follow in  
21 the course of this litigation, you are asking for  
22 attorney work product. We are not obliged to tell you  
23 what our strategy is, what our intentions are and how  
24 we're going to handle this litigation. That is  
25 privileged. You do not have to answer.

1 MR. MARCELO: And, Mr. Mann, you're saying  
2 that covers whether or not the expert that's been  
3 referred to will testify at the trial or not?

4 MR. MANN: Your all -- you're asking for  
5 what our intentions are. Have we identified anyone as a  
6 testifying expert?

7 MR. MARCELO: Well, and that's why I'm  
8 clarifying.

9 MR. MANN: No. Can you read English? Have  
10 you seen us identify anyone as a testifying expert?

11 MR. MARCELO: Mr. Mann, I'll remind you of  
12 your own reminder of professionalism.

13 MR. MANN: I'm asking you a question. You  
14 understand this. Have we identified any testifying  
15 experts? That's a yes or no question, and it can be  
16 answered by somebody who can read and understand  
17 English.

18 MR. MARCELO: No, not to our knowledge you  
19 haven't identified --

20 MR. MANN: Then, then, then you have no  
21 business asking this question. You're asking for what  
22 our intentions are and how we're going to handle this  
23 lawsuit. We are not going to tell you our strategy or  
24 what our intentions are. You will find out what you're  
25 entitled to in due course. Simple as that.

1 Q. (BY MR. MARCELO) Mr. Schaefer, is Phoenix  
2 Digital contending that Bungie's trademark for the  
3 Destiny 2 mark are invalid?

4 A. That Bungie's Destiny 2 marks are invalid?

5 Q. Right.

6 A. Yes.

7 Q. On what basis?

8 A. The only ones that were valid was for Beyond  
9 Light, and there were eight subscriptions sold in Beyond  
10 Light. Everything else is not valid.

11 Q. And when you say not valid as to Phoenix -- or as  
12 to Bungie's Destiny 2 marks --

13 A. There were -- there were no trademarks -- if you  
14 look at the date of the trademarks, they were not in  
15 place at the time of the litigation or the time that we  
16 were selling the cheat.

17 (Deposition Exhibit No. 65 was marked for  
18 identification.)

19 Q. (BY MR. MARCELO) I'll drop into the chat what  
20 will be marked as Exhibit 65. Mr. Schaefer, do you see  
21 this document?

22 A. Yep.

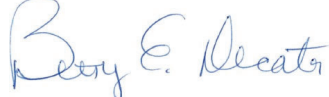
23 Q. This was attached to Bungie's Amended Complaint,  
24 Exhibit 5.

25 A. That's Destiny. That's not Destiny 2.

## REPORTER'S CERTIFICATE

I, BETSY E. DECATER, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify that the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that a review of which was requested; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND and DIGITAL SIGNATURE this 27th day of March, 2023.



BETSY E. DECATER, RPR  
Washington Certified Court Reporter, CCR 3109